

**United States Department of Labor
Employees' Compensation Appeals Board**

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| R.A., Appellant |) | |
| |) | |
| and |) | Docket No. 22-0307 |
| |) | Issued: August 5, 2022 |
| U.S. POSTAL SERVICE, BLACKWOOD POST OFFICE, Blackwood, NJ, Employer |) | |
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Appearances:
Michael D. Overman, Esq., for the appellant¹
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Chief Judge
JANICE B. ASKIN, Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On December 27, 2021 appellant, through counsel, filed a timely appeal from a July 14, 2021 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act² (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

¹ In all cases in which a representative has been authorized in a matter before the Board, no claim for a fee for legal or other service performed on appeal before the Board is valid unless approved by the Board. 20 C.F.R. § 501.9(e). No contract for a stipulated fee or on a contingent fee basis will be approved by the Board. *Id.* An attorney or representative's collection of a fee without the Board's approval may constitute a misdemeanor, subject to fine or imprisonment for up to one year or both. *Id.*; *see also* 18 U.S.C. § 292. Demands for payment of fees to a representative, prior to approval by the Board, may be reported to appropriate authorities for investigation.

² 5 U.S.C. § 8101 *et seq.*

ISSUE

The issue is whether appellant has met her burden of proof to establish bilateral knee conditions causally related to the accepted factors of her federal employment.

FACTUAL HISTORY

On July 17, 2018 appellant, then a 58-year-old window distribution clerk, filed an occupational disease claim (Form CA-2) alleging that she developed bilateral knee conditions due to factors of her federal employment, including long hours of walking, bending, standing, carrying, stretching, lifting, and pulling. She first became aware of her condition and its relationship to her federal employment on May 31, 2018. Appellant stopped work on July 12, 2018 and has not returned.

In a July 19, 2018 development letter, OWCP informed appellant of the deficiencies of her claim. It advised her of the type of factual and medical evidence necessary and provided a questionnaire for her completion. In a separate development letter of even date, OWCP requested that the employing establishment provide comments from a knowledgeable supervisor regarding the accuracy of appellant's allegations. It afforded both parties 30 days to respond.

In a July 6, 2018 report, Dr. Sunny Gupta, an osteopath Board-certified in sports medicine, noted that appellant was seen for complaints of bilateral knee pain, which started insidiously without any antecedent injury, trauma, falls or accidents; however, which were worsened by prolonged standing, sitting and walking. He reviewed x-rays of appellant's bilateral knees, which revealed no acute fractures and moderate tricompartmental degenerative changes with some joint space narrowing with marginal osteophyte formation. Dr. Gupta related that appellant's physical examination findings included no bilateral knee ecchymosis or edema, normal gait with no antalgia, full range of motion (ROM), no effusion, joint line tenderness, and negative Lachman's, anterior/posterior drawer, McMurray's, and valgus/varus stress testing. He diagnosed bilateral knee moderate tricompartmental degenerative joint disease with exacerbation.

In an August 3, 2018 attending physician's report (Form CA-20), Dr. Julius Mingroni, an osteopath specializing in family medicine, diagnosed severe bilateral knee degenerative joint disease. He checked a box marked "Yes" to the questions of whether there was any history or evidence of concurrent or preexisting injury or disease or physical impairment and whether the diagnosed condition had been caused or aggravated by appellant's employment. Dr. Mingroni related that appellant was totally disabled from work.

By decision dated September 5, 2018, OWCP denied appellant's claim finding that she failed to establish a causal relationship between the diagnosed condition and the accepted factors of her federal employment.

On September 13, 2018 appellant, through counsel, requested an oral hearing before a representative of OWCP's Branch of Hearings and Review.

Dr. Gupta, in reports dated July 27 and August 17, 2018, diagnosed bilateral knee primary osteoarthritis and bilateral knee degenerative joint disease.

In an August 24, 2018 report, Dr. Gupta related appellant's physical examination findings. He diagnosed bilateral knee primary osteoarthritis and bilateral knee degenerative joint disease. Appellant related to Dr. Gupta that she did not believe that she could return to work at the employing establishment due to pain from her duties of prolonged walking and standing. Dr. Gupta agreed to provide appellant with documentation that she was unable to return to work at that time.

In an October 30, 2018 addendum narrative report, Dr. Gupta reviewed a description of appellant's job duties, which included standing, walking twisting, reaching, bending, lifting or carrying heavy parcels up to 45 to 50 pounds, and pushing equipment weighing up to 3,000 pounds. He stated that he could not definitely attribute her bilateral knee degenerative joint disease to her work, but that the job duties as described by her would aggravate the condition. Dr. Gupta explained the biomechanics of appellant's job duties, including standing for many hours at a time would cause muscle fatigue, decreasing the body's ability to withstand these forces. Appellant's bending and lifting activities would place significant compressive forces across the knee joints. Cumulatively, these forces would aggravate her preexisting degenerative joint disease.

Following a preliminary review, by decision dated December 11, 2018, an OWCP hearing representative set aside OWCP's September 5, 2018 decision and remanded the case for referral for a second opinion evaluation.

On January 25, 2019 OWCP referred appellant, together with a statement of accepted facts (SOAF), list of questions, and medical record, for a second opinion evaluation with Dr. Stanley Askin, a Board-certified orthopedic surgeon, to determine whether she sustained a diagnosed medical condition causally related to accepted employment factors.

In a report dated February 15, 2019, Dr. Askin related appellant's physical examination findings and noted that she had developed bilateral knee osteoarthritis as early as 2015. He opined that the accepted employment factors did not cause or aggravate her diagnosed bilateral knee osteoarthritis. Dr. Askin observed that, once appellant developed osteoarthritis, it became uncomfortable for her to be physically active. He explained that this was a reflection of the disease process and not related to any employment factors. In an attached work capacity evaluation (Form OWCP-5c), Dr. Askin checked a box marked "Yes" to the question of whether appellant was capable of performing her usual job without restriction.

OWCP thereafter found that a conflict existed in the medical opinion evidence as to whether appellant's bilateral knee conditions were caused or aggravated by her employment factors. On July 31, 2019 it referred her, along with the medical record and a SOAF, to Dr. Ian Blair Fries, a Board-certified orthopedic surgeon, for an impartial medical examination to resolve the conflict of medical opinion between Dr. Askin and Dr. Gupta. The April 9, 2019 SOAF provided to Dr. Fries noted the physical requirements of appellant's position as lifting/carrying 35 pounds continuously/intermittently up to eight hours a day, standing continuously/intermittently six hours a day, walking continuously/intermittently six hours a day, bending/stooping continuously/intermittently two hours a day, and pushing/pulling continuously/intermittently one hour a day.

In a report dated August 9, 2019, Dr. Manny D. Porat, a Board-certified orthopedic surgeon, diagnosed left knee pain, status post left knee replacement, and right knee primary osteoarthritis. He noted that appellant had undergone total left knee replacement on April 15, 2019.

In a report dated January 21, 2020, Dr. Fries reviewed appellant's medical history and noted the physical requirements of her job duties. He diagnosed bilateral tricompartmental degenerative knee joint disease and post left total knee replacement. On physical examination of appellant's bilateral knees, Dr. Fries reported normal gait with no antalgia, no ecchymoses, edema or effusion, tenderness of the joint line, functionally full ROM without pain, intact strength, and negative Lachman, anterior and posterior drawer, McMurray, and varus valgus stress tests. He explained that degenerative knee arthritis is not caused nor permanently aggravated by standing walking or performing moderate activities based on medical science. The accepted factors for knee arthritis included obesity, prior surgery, and age. Dr. Fries reported that there was some evidence in the medical science that squatting, kneeling, and bending together with heavy lifting and physical demands can be considered as factors in the development of knee osteoarthritis, however, these factors were not part of appellant's job duties. He concluded that appellant's bilateral knee degenerative osteoarthritis was not permanently nor measurably aggravated by her job duties and that there was no evidence of a work-related knee injury due to a specific traumatic incident.

By decision dated March 16, 2020, OWCP denied appellant's claim finding the evidence insufficient to establish that the diagnosed bilateral knee osteoarthritis had been caused or aggravated by the accepted employment factors.

On March 26, 2020 appellant, through counsel, requested a hearing before a representative of OWCP's Branch of Hearings and Review. A telephonic hearing was held on July 6, 2020.

By decision dated September 18, 2020, OWCP's hearing representative set aside the March 16, 2020 decision and remanded the case for OWCP to obtain a supplemental report from Dr. Fries, regarding causal relationship.

OWCP prepared an updated SOAF on October 7, 2020, which again noted the physical requirements of appellant's job duties. On October 8, 2020 it referred the updated SOAF to Dr. Fries and requested that he provide a supplemental report, with detailed medical rationale explaining his opinion that appellant's job duties did not cause or aggravate her bilateral knee condition.

In a December 22, 2020 supplemental report, Dr. Fries summarized appellant's medical history regarding her development of bilateral knee degenerative arthritis. He questioned the need for her left total knee replacement performed by Dr. Porat on April 15, 2019. Dr. Fries reiterated that degenerative knee arthritis was not caused by walking, standing, and performing moderate activities, nor were these permanent aggravating factors according to medical science. Next, he attributed appellant's claimed work disability and subjective complaints to symptom magnification. Dr. Fries concluded that bilateral knee osteoarthritis was an age-related condition, which was neither caused nor measurably aggravated by her job duties. He noted that, as the SOAF was substantially similar, his opinions did not change.

By decision dated January 21, 2021, OWCP denied appellant's claim finding Dr. Fries' opinion was entitled to the special weight of the medical opinion evidence.

On January 27, 2021 appellant, through counsel, requested a hearing before a representative of OWCP's Branch of Hearings and Review. A telephonic hearing was held on April 30, 2021.

By decision dated July 14, 2021, OWCP's hearing representative affirmed OWCP's January 21, 2021 decision.

LEGAL PRECEDENT

An employee seeking benefits under FECA³ has the burden of proof to establish the essential elements of his or her claim, including the fact that the individual is an employee of the United States within the meaning of FECA, that the claim was timely filed within the applicable time limitation period of FECA,⁴ that an injury was sustained in the performance of duty, as alleged, and that any disability or medical condition for which compensation is claimed is causally related to the employment injury.⁵ These are the essential elements of each and every compensation claim, regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.⁶

To establish that an injury was sustained in the performance of duty in an occupational disease claim, a claimant must submit: (1) a factual statement identifying employment factors alleged to have caused or contributed to the presence or occurrence of the disease or condition; (2) medical evidence establishing the presence or existence of the disease or condition for which compensation is claimed; and (3) medical evidence establishing that the diagnosed condition is causally related to the identified employment factors.⁷

Causal relationship is a medical question that requires rationalized medical opinion evidence to resolve the issue. A physician's opinion on whether there is causal relationship between the diagnosed condition and the implicated employment factor(s) must be based on a complete factual and medical background. Additionally, the physician's opinion must be expressed in terms of a reasonable degree of medical certainty, and must be supported by medical

³ *Id.*

⁴ *J.V.*, Docket No. 21-1353 (issued March 21, 2022); *J.P.*, Docket No. 19-0129 (issued April 26, 2019); *S.B.*, Docket No. 17-1779 (issued February 7, 2018); *Joe D. Cameron*, 41 ECAB 153 (1989).

⁵ *D.B.*, Docket No. 21-0550 (issued March 7, 2022); *J.P.*, *id.*; *S.B.*, *id.*; *Joe D. Cameron*, *id.*

⁶ *J.V.*, *supra* note 4; *R.R.*, Docket No. 19-0048 (issued April 25, 2019); *L.M.*, Docket No. 13-1402 (issued February 7, 2014); *Delores C. Ellyett*, 41 ECAB 992 (1990).

⁷ *J.V.*, *id.*; *R.G.*, Docket No. 19-0233 (issued July 16, 2019). *See also* *Roy L. Humphrey*, 57 ECAB 238, 241 (2005); *Ruby I. Fish*, 46 ECAB 276, 279 (1994); *Victor J. Woodhams*, 41 ECAB 345 (1989).

rationale, explaining the nature of the relationship between the diagnosed condition and appellant's specific employment factor(s).⁸

ANALYSIS

The Board finds that this case is not in posture for a decision.

OWCP properly determined that there was a conflict in the medical opinion evidence between Dr. Gupta, an attending physician, and Dr. Askin, an OWCP referral physician, as to whether appellant's bilateral knee osteoarthritis had been caused or aggravated by the accepted factors of her federal employment. In order to resolve the conflict, it properly referred appellant, pursuant to 5 U.S.C. § 8123(a), to Dr. Fries for an impartial medical examination and an opinion on causation.

In a situation where OWCP secures an opinion from an impartial medical specialist for the purpose of resolving a conflict in the medical evidence and the opinion from such examiner requires clarification or elaboration, it has the responsibility to secure a supplemental report from the specialist for the purpose of correcting the defect in the original opinion.⁹ If an impartial medical specialist is unable to clarify or elaborate on his or her original report, or if his or her supplemental report is also vague, speculative, or lacking in rationale, OWCP must submit the case record and a detailed SOAF to a second impartial medical specialist for the purpose of obtaining his or her rationalized medical opinion on the issue.¹⁰

In his reports dated January 21 and December 22, 2020, Dr. Fries opined that the accepted employment factors did not measurably aggravate or accelerate bilateral knee osteoarthritis as medical science did not support that appellant's job duties of walking, standing and moderate activity were aggravating factors. He reported that there was some evidence in the medical science that squatting, kneeling, and bending together with heavy lifting could be considered as factors in the development of knee osteoarthritis, however, these factors were not part of appellant's job duties. The Board notes that the SOAFs OWCP provided to Dr. Fries clearly indicated that appellant did perform lifting/carrying 35 pounds continuously/intermittently, as well as bending/stooping continuously/intermittently two hours a day. It is well established that medical reports must be based on a complete and accurate factual and medical background and that medical opinions based on an incomplete or inaccurate history are of limited probative value.¹¹ As Dr. Fries did not acknowledge that appellant did perform these job duties, his opinion was not sufficiently rationalized.

⁸ *J.V., id.; John J. Carlone*, 41 ECAB 354 (1989).

⁹ *M.M.*, Docket No. 20-1524 (issued April 20, 2021); *S.R.*, Docket No. 17-1118 (issued April 5, 2018); *Nancy Lackner (Jack D. Lackner)*, 40 ECAB 232, 238 (1988).

¹⁰ *M.M., id.; M.D.*, Docket No. 19-0510 (issued August 6, 2019); *Talmadge Miller*, 47 ECAB 673 (1996); *Harold Travis*, 30 ECAB 1071, 1078 (1979).

¹¹ *A.C.*, Docket No. 19-1522 (issued July 27, 2020); *J.R.*, Docket No. 12-1099 (issued November 7, 2012); *Douglas M. McQuaid*, 52 ECAB 382 (2001).

In a December 22, 2020 supplemental report, Dr. Fries reiterated that appellant's bilateral knee degenerative osteoarthritis was not permanently nor measurably aggravated by her job duties and that there was no evidence of a work-related knee injury due to a specific traumatic incident. The Board has held that any contribution to her condition by the accepted employment factors would render the condition compensable.¹² Dr. Fries noted that, as the SOAF was substantially similar, his opinions did not change. He did not provide sufficient medical rationale explaining whether appellant's accepted job duties, caused or aggravated her bilateral knee conditions temporarily or permanently, by any degree. As such Dr. Fries' report is insufficient to resolve the conflict of medical opinion evidence.

For these reasons, the Board finds that Dr. Fries' reports cannot be afforded the special weight of an impartial medical specialist. Therefore, in order to resolve the conflict in medical opinion evidence, the case will be remanded to OWCP for referral of the case record, including an updated SOAF, and appellant to a new impartial medical specialist for physical examination and an opinion, which evaluates whether she sustained a bilateral knee condition causally related to the accepted factors of her federal employment.¹³ After this and other such further development as deemed necessary, OWCP shall issue a *de novo* decision.

CONCLUSION

The Board finds that the case is not in posture for decision.

¹² *R.G.*, Docket No. 21-0812 (issued February 28, 2022); *F.K.*, Docket No. 19-1804 (issued April 27, 2020); *J.B.*, Docket No. 17-2021 (issued August 8, 2018); *G.G.*, Docket No. 17-0504 (issued August 8, 2017); *Beth C. Chaput*, 37 ECAB 158 (1985) (it is not necessary to show a significant contribution of employment factors to a diagnosed condition to establish causal relationship).

¹³ *G.B.*, Docket No. 19-1510 (issued February 12, 2020); *see supra* note 11.

ORDER

IT IS HEREBY ORDERED THAT the July 14, 2021 decision of the Office of Workers' Compensation Programs is set aside, and the case is remanded for further proceedings consistent with this decision of the Board.

Issued: August 5, 2022
Washington, DC

Alec J. Koromilas, Chief Judge
Employees' Compensation Appeals Board

Janice B. Askin, Judge
Employees' Compensation Appeals Board

Valerie D. Evans-Harrell, Alternate Judge
Employees' Compensation Appeals Board